



AF  
JPW

PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	09/863,528
Filing Date	May 22, 2001
First Named Inventor	Daniel W. Nebert
Art Unit	1632
Examiner Name	Valarie Bertoglio
Attorney Docket Number	91830.0476945

### ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	Summary of Record of Interview; Return Postcard.
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		

Remarks

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Frost Brown Todd LLC
Signature	
Printed name	Stephen R. Albainy-Jenei
Date	December 16, 2005
Reg. No.	41,487

### CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature	
Typed or printed name	Linda E. Spore
Date	December 16, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



**Customer No. 26874**  
PATENT TRADEMARK OFFICE  
**Atty. Docket: 91830.0476945**

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

Applicant: Nebert : Paper No:  
Serial No. 09/863,528 : Group Art Unit: 1632  
Filed: May 22, 2001 : Examiner: Valarie E. Bertoglio  
For: **TRANSGENIC ANIMALS FOR MONITORING WATER QUALITY**

**SUMMARY OF RECORD OF INTERVIEW**

**Confirmation No. 1421**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants previously have filed a Response to the earlier Office Action, dated May 26, 2005. In response to the Interview Summary, dated November 17, 2005, please consider the following remarks:

**REMARKS**

Applicant's attorney thanks Examiner Bertoglio for the telephonic interview which took place on November 3, 2005. Discussion of the claimed invention and the cited art helped crystallize the distinctions over the art and, we believe, define patentable subject matter. The submitted amendments summarize the comments made by Applicant's attorney in that interview.

During the telephone conversation, the term "transgenic" was discussed as encompassing chimeric animals and the claims are enabled with respect to chimeras.

Also discussed during the interview was the term “known standard” that the Examiner discussed as not being defined by the specification. Claims 1 and 2 have been amended to more clearly state the method that must be used to practice the invention. The Examiner has expressed concern that the claims may be deficient because they do not require a determination of background expression for each organism prior to use. While Applicant respectfully maintains that correlating expression to a “known standard” is intuitive in the art, the current amendments make clear that a standard water sample containing a *known level of contaminant* must be used as a *reference* to standardize the transgenic organism.

It was agreed that claim 18 was confusing as it included both gene names and response elements and because it contains abbreviated gene names. Applicant has canceled claim 18.

Therefore, in view of the breadth of the claims as amended and the guidance provided by the specification, one of ordinary skill in the art at the time of the invention would not have required an undue amount of experimentation to make and use the claimed invention. In light of this, it is submitted that the claims of the present application, as amended herein, are patentable.

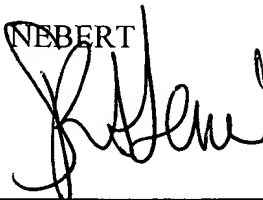
### **Conclusion**

It is respectfully submitted that the claims currently pending in the present application are in form for allowance. Accordingly, reconsideration of those claims, as amended, is earnestly solicited. Applicants encourage the Examiner to contact their representative, Stephen R. Albainy-Jenei at (513) 651-6839 or [salbainyjenei@fbtlaw.com](mailto:salbainyjenei@fbtlaw.com).

The Commissioner for Patents is hereby authorized to charge any deficiency or credit any overpayment of fees to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully submitted,

DANIEL W. NEBERT

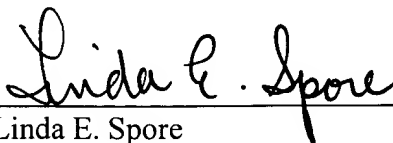


By

\_\_\_\_\_  
Stephen J. Albainy-Jenei  
Registration No. 41,487  
Attorney for Applicant(s)  
FROST BROWN TODD LLC  
2200 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 651-6823  
salbainyjenei@fbtlaw.com

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, this 16th day of December, 2005.



\_\_\_\_\_  
Linda E. Spore